

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

DELIA BENITEZ INDIVIDUALLY §  
AND D/B/A TEXINV ENTERPRISES LLC §  
*Plaintiffs,* §  
§  
v. § CIVIL ACTION NO. 5-17-cv-00190  
§  
UNITED FIRE & CASUALTY COMPANY §  
AND BENNY DURHAM §  
*Defendants.* §

**DEFENDANT UNITED FIRE & CASUALTY COMPANY'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF THIS COURT:

UNITED FIRE & CASUALTY COMPANY, (hereinafter “United Fire”), one of the Defendants in the above styled and numbered cause, files this, its Notice of Removal, and would show the Court as follows:

1. UNITED FIRE & CASUALTY COMPANY and BENNY DURHAM (hereinafter “Durham”) have been sued in a civil action styled Cause No. 2017CVH001751 D2; *Delia Benitez Individually and d/b/a TEXINV Enterprises LLC v. United Fire & Casualty Company and Benny Durham*; in the 111<sup>th</sup> District Court in Webb County, Texas (hereafter referred to as “the state court action”). The petition in the state court action was filed August 21, 2017. On September 8, 2017, United Fire received citation and a copy of the petition, and at that time it was determined that diversity jurisdiction was proper, pursuant to 28 U.S.C. §1332. On September 8, 2017, Durham also received citation and a copy of the petition.

2. United Fire files this notice of removal pursuant to the provisions of 28 U.S.C. §1441, *et. seq.*, to remove this action from the District Court of Webb County, Texas to the United States District Court for the Southern District of Texas, Laredo Division.

3. Plaintiff, in its original petition, alleges that Defendant United Fire wrongfully denied or delayed payment for claims for wind/hail damage to the structure insured by United Fire, thereby breaching the policy of insurance issued by United Fire to Plaintiff. Plaintiff further alleges that United Fire's actions in investigating and delaying or denying Plaintiff's claim for insurance benefits constituted a violation of the common law duty of good faith and fair dealing. Plaintiff has also sued United Fire's employee, Durham, the adjuster assigned to this claim, for unfair settlement practices.

4. This Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. §1332. Plaintiff, by nature of its citizenship and of its principal place of business, is a citizen of the state of Texas. Defendant, United Fire, by nature of its incorporation and of its principal place of business, is a citizen of the states of Iowa. Although Durham is a citizen of the State of Texas, United Fire contends that Durham is improperly joined in this action because it is clear that Plaintiff has not stated a claim against Durham. In particular, there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against Durham as set forth in the Plaintiff's Original Petition. *See Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp.*, 818 F. 3d 193 (5<sup>th</sup> Cir. 2016).

5. Plaintiff has sued Durham, alleging boilerplate claims arising out of the Texas Insurance Code with only conclusory allegations of wrongdoing.<sup>1</sup> United Fire contends that Durham has been improperly joined in this action simply to defeat diversity. Therefore, the joinder of Durham does not defeat diversity jurisdiction under 28 U.S.C. § 1332. The amount in

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<sup>1</sup> Plaintiff's counsel has made identical allegations concerning other United Fire adjusters in a separate lawsuit filed in Webb County District Court in a different claim by different insureds filed a few days after the instant lawsuit. *See Robledo v. United Fire Lloyds, Maria Perez and Patrick Peden*, Cause No. 2017CVH002030 D2, in the 111<sup>th</sup> Judicial District Court, Webb County, Texas.

controversy is in excess of \$75,000, exclusive of interest and costs.

6. Venue is proper in Laredo Division of the Southern District of Texas because the insured property is located in Laredo, Webb County, Texas, which is the location where the facts giving rise to this suit took place.

7. In accordance with 28 U.S.C. § 1446 (a), the following are attached hereto:

- Exhibit A: Index of Matters Being Filed;
- Exhibit B: A copy of the Citation as to United Fire & Casualty Company;
- Exhibit C: A copy of the Citation as to Benny Durham;
- Exhibit D: Plaintiff's Original Petition;
- Exhibit E: Defendant United Fire & Casualty Company's Original Answer;
- Exhibit F: Defendant Benny Durham's Original Answer;
- Exhibit G: The state court's Docket Sheet;
- Exhibit H: List of all Parties and Counsel of record;
- Exhibit I: Defendant United Fire & Casualty Company's Consent to Removal of Case to Federal Court.
- Exhibit J: Defendant Benny Durham's Consent to Removal of Case to Federal Court.

8. The citation and petition in this action were served on United Fire on September 8, 2017 by serving its registered agent: Joe Johnson, 455 E. Medical Center Blvd., Suite 400, Webster, Texas 77598-4398. This notice of removal is filed within 30 days of receipt of the petition and is timely filed under 28 U.S.C. § 1446(b). Furthermore, this notice of removal is being filed within one year of the date this action was commenced.

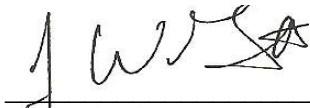
9. In accordance with 28 U.S.C. §1446(d), written notice of the filing of this notice

of removal will be promptly served upon all adverse parties, and a copy of this notice of removal promptly will be filed with the Clerk of the District Court of Webb County, Texas.

10. Defendants United Fire & Casualty Company and Benny Durham respectfully request that this action be removed to this Court and that this Court accept jurisdiction of this action and place this action on the docket of this Court for further proceedings as though the action originally had been instituted in this Court.

Respectfully submitted,

GAUNTT KOEN BINNEY & KIDD, LLP

By: 

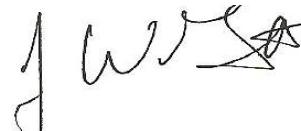
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Counsel for Defendants

**CERTIFICATE OF SERVICE**

This pleading was served in compliance with Rule 5 Federal Rules of Civil Procedure on October 2, 2017, via facsimile, first class regular mail, certified mail, return receipt requested and/or electronically.

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J. Chad Gauntt